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cases in the United States Circuit Courts of Appeals for the Second Circuit, the Third Circuit, the Sixth Circuit, and the Eighth Circuit, as clearly established in patent cases, and has set aside the substantially uniform decisions of the Circuit and District Courts over the entire United States, and has contravened the principles of law laid down in other cases and established by the decisions of this Court, this Court, however, not so far as petitioner is advised having specifically passed upon such question in a patent case.

The decisions particularly overruled are the decisions in

General Electric Company vs. New England Electric, 128 Fed. Rep. 738, 63 C. C. A. 448, Second Circuit, Coxe, C. J.;

Morton Trust Company, et al. vs. Standard Steel Car Co., 177 Fed. Rep. 931, 101 C. C. A. 211, Third Circuit, Lanning, C. J.;

Johnson, et al. vs. Foos Mfg. Co., 141 Fed. Rep. 73, 72 C. C. A. 105, Sixth Circuit, Lurton, C. J.;

Deere & Webber Co. vs. Dowagiac Mfg. Co., 153 Fed. Rep. 177, 82 C. C. A. 351, Eighth Circuit, Adams, C. J.

A Supreme Court decision particularly referred to is

Kate C. Archer vs. Greenville Sand & Gravel Co., 233 U. S. 60, B. 58, L. Ed. 850.

II. The bill of complaint herein alleged infringement of United States Letters Patent No. 876,991, of January 21, 1908, issued to Allen P.

Boyer as assignee of Hubert A. Myers, respondent-defendant, who organized and was president of the defendant company. The patent and all rights of recovery was assigned to petitioner-plaintiff. The respondent-defendant Myers designed the structure manufactured by the defendant company and managed the said company, and both defendants claimed to work under a patent issued to said Myers December 7, 1909, No. 942,735. On October 23, 1909, formal notice was served on the respondents, the defendant company and the defendant Myers, to cease infringing the patent in suit. The petitioner-plaintiff published the fact that it was claiming that the Myers Manufacturing Company was infringing (see R. p. 95).

Defendant Myers testified, and admitted, R. p. 100, in answer to XQ. 40:

> "It was **not** the decision of the company at that time to abandon the manufacture of hay cars, but owing to our financial condition * * * * ** we were forced to abandon the manufacture of hay cars as the publication of said piece or article referred to caused the banks to draw in what loans we already had and refused to give any additional help to us in a financial way until said patent case or infringement claims were proven out, but at the time I left the company, arrangements were being made to organize, or interest additional capital and go ahead with the business, as we had been assured that the patent was non-infringing."

No formal reply was made by any of the defendants to said notice of infringement, although Peterson, when president of the respondent-defendant company, swore that he told Boyer, president

of the petitioner-plaintiff company, that they were "practically dead as far as the manufacturing was concerned," the Court saying at page 3 of the opinion that this occurred in February, 1910. This notification was oral,—see Peterson deposition, R. p. 109, in answer to Q. 23:

> "I called on Mr. Boyer twice during the early part of 1910, probably January or February, with a view to selling him the hay car patent, at which time I went over the Myers' situation and stated to him that we were practically dead as far as the manufacturing was concerned, as we had not turned a wheel since the previous September. Farther than this, I am unable to say that he has had any notice."

Boyer has no recollection of this, but remembers that Peterson said that he was out of it (answer to XQ. 48, R. p. 82).

Yet, according to this witness Peterson's own testimony at this very time the cars were being supplied to one Dietrich, R. p. 106:

> "The cars were **largely** disposed of through Mr. C. F. Dietrich, of Bryan, Ohio, and in August of 1909, we contracted with Mr. Dietrich to deliver to him five hundred cars for the season of 1910, and be delivered as called for."

thus showing Dietrich was the principal agent of respondent company. The witness said further:

> "(6) A notice from Mr. Boyer or the Goshen Manufacturing Company, in October, 1909, that we were infringing their pat-

> ent and also financial embarrassment put a complete stop to our manufacturing. However, to save trouble and a suit with Mr. Dietrich, with whom we had made a contract to deliver the aforesaid cars, we gave him the use of shop and all the parts and unfinished cars, amounting to about 200, which he made up himself and shipped during the winter of 1909 and 1910."

The witness also made numerous efforts after the notice to dispose of the business in hay cars (see top of R. p. 107) to

> V. L. Nye, of Canton, Ohio;
> F. E. Myers & Brothers, of Ashland, Ohio;
> Whitman & Barnes, of Chicago, Ill.; and
> Mr. Boyer, of Goshen, Ind.;

and he says:

> "Our efforts were unsuccessful, mainly on account of notice which had been sent us by Mr. Boyer to the effect that we were infringing his patent."

but a sale was made, except of hay cars, in March, 1910.

Dietrich was thus supplied, after notice of infringement, with cars by the respondent-defendant for the season of 1910, as admitted by said Peterson, and the only acknowledgment from the respondent-defendant to the petitioner-plaintiff of plaintiff's rights was a conversation in which Peterson, the defendant company's president at that time, as an incident of the conversation stated that they were "practically dead as far as the manufacturing was concerned," when it transpired manu-

facturing was being conducted in the defendant's plant at the very time he was telling the story to Boyer.

Hay carriers are seasonable goods and must be manufactured in advance of the haying season and sold just previous to the time that farmers begin haying. March, 1910, was the time to deliver to the agent Dietrich for the season of 1910.

On September 12, 1910, the respondent-defendant company sued Mr. Boyer, principal stockholder of the petitioner-plaintiff company, in the Elkhart County Circuit Court in the State of Indiana for libel for publishing the notice claiming infringement by the respondents-defendants herein and the respondents-defendants claimed damages to the extent of $10,000 because of injury to its business by the newspaper publication of October, 1909, of the notice of infringement. In this bill of complaint it was asserted (R. p. 363) that

> "The plaintiff * * * *is now, and has been for more than five years last past, engaged in the business of manufacturing hay cars."

and asserted that the libel prevented the "sale of its letters patent and manufactured hay cars to one V. L. Nye"; and that

> "thereafter plaintiff" (respondent-defendant herein) "had entered into an agreement with one Aaron Hartzler for the sale to him of its manufactured hay cars and letters patent therefor, and because of said statements and publications so made by defendant said Hartzler refused to carry out said agreement and plaintiff again lost the sale of said articles to its great damage."

And it is stated that the plaintiff there, meaning the respondent-defendant, the Hubert A. Myers Manufacturing Company, "has had its **business** entirely destroyed and **plaintiff has been unable to sell any** of its manufactured **hay cars** to the damage to the plaintiff in the sum of $10,000.00."

Whereupon the petitioner-plaintiff herein, feeling warranted in the belief that the said Hubert A. Myers Manufacturing Company was not recognizing plaintiff's patent rights and **was endeavoring to sell its manufactured hay cars** to various people and concerns, according to its own solemn allegations, filed the bill of complaint herein immediately thereafter on October 3, 1910.

Whereupon the defendant company filed a separate answer and denied (R. p. 13) that

> "either by itself or with others manufactured, sold or used, or caused to be manufactured, sold or used, any hoisting devices including or embodying any of the improvements whatsoever set forth and claimed in said letters patent, No. 876,991; or that it has in any manner infringed any of the rights of the complainant under said letters patent, * * On the contrary, this defendant alleges that it has not manufactured any hoisting device of any kind whatsoever since the month of October, in the year 1909, and that since the month of **March in the year 1910**, this defendant has not sold or had for sale any hoisting devices of any sort whatsoever,"

thus confessing that six months after the notice it had sold the hay cars complained of, and thus showing that it was insisting upon its right. Further, in the testimony of its president, confirmed by

the pleadings in the Elkhart County Court, it showed constant and strong effort to sell hay cars as well as the patent owned by it. It is conceded by the Court of Appeals for the Seventh Circuit in its decision below that this respondent-defendant company continued its relation with its principal selling agent Dietrich and supplied him with goods for the season of 1910, all of which were delivered to him in March, 1910, just in time for that season's business, and it appears consequently that that principal selling agent sold during the season of 1910 these infringing hay carriers precisely as it had sold them in previous years.

These facts are practically conceded by the United States Circuit Court of Appeals in its opinion, because it points out that respondent-defendant settled its contract obligations with Dietrich (its principal selling agent) by permitting him to use its shops and material to finish up the 200 carriers before referred to during the six months following the notice of infringement, and this very selling agent distributed in 1910 about as many as he had distributed the year before. This was followed at the beginning of the next manufacturing season, viz. September 12, 1910, by a suit against Boyer, the president of the petitioner-plaintiff herein, claiming great damage because petitioner had interfered with sale of its goods. This was the formal reply to the notice of infringement of October, 1909. This action in bringing suit petitioner-plaintiff took at its face value and promptly brought suit for infringement of the patent in suit because the respondent-defendant, while it was weak financially, had successfully supplied its principal selling agent Dietrich with 200 carriers after the notice of infringement, which carriers had been distributed by him as such selling agency during the season of 1910, and constituted, according to the state-

ment of the Court of Appeals in its opinion, a settlement of the contract obligations of the respondent-defendant with this **co-infringer** Dietrich, because he was an infringer in selling the infringing goods.

The bill in the instant cause was dismissed after hearing in the court below for **want of equity.** No statement or opinion by that court indicates that the dismissal was for want of equitable jurisdiction.

With these facts, the Court of Appeals for some unaccountable reason has **declined to take jurisdiction of the case,** saying that it is not a proper case for equitable jurisdiction.

The respondent-defendant Myers never discontinued infringement; the respondent-defendant company never discontinued the manufacture or sale, always claiming the right to continue, and sued Boyer for damages because that right to do business in manufacture and sale was claimed to be interfered with, Boyer being president of the petitioner-plaintiff company; and in its answer in this case it claimed **non-infringement** and **invalidity** of the patent.

The Court of Appeals has said, in justification of its conclusion, that it would not give the force of evidence to the statements in the pleadings by respondent-defendant company against Boyer in the Elkhart County Court, saying that the unsworn complaint signed only by the attorneys-at-law filed in the state court, beginning with the allegation that the "plaintiff is a corporation duly organized under the laws of the State of Indiana, and is now and has been for more than five years last past engaged in the business of **manufacturing hay cars,**" shall not have the force of evidence, and the Court contents itself by making this quotation from the bill of complaint in its opinion, and refrains from pointing out or considering that the claim of

loss of profits of $3,000 and damages of $10,000 due to the interference with its right to sell such hay cars is the very essence of the suit, and urges that the thing claimed to be interfered with was the **sale of the patent**, whereas the complaint there shows that the notice published, as to which the damage was claimed, was not directed to any patent owned by the Hubert A. Myers Manufacturing Company but was **directed** to the **hay carriers** which they were manufacturing and said nothing about any patent, as is evidenced by referring to the bill of complaint in that case (R. p. 363). The published notice appears in full at R. p. 95 and makes claim of infringement of petitioner-plaintiff's patent and says nothing about any patent of respondent.

It is therefore clear that it was not any libel notice interfering with respondent-defendant company's right to sell patent No. 942,735, that was the subject matter of the Elkhart County suit, but that it **was the right to sell the hay cars that were then being made** and had been made for a period of five years by the respondent-defendant. Therefore, the discussion on page 4 of the opinion of the Court of Appeals for the Seventh Circuit about the continued ownership by respondent-defendant company of Letters Patent 942,735 is wholly outside the Elkhart County suit and is wholly outside any claim made by respondent herein. It is not claimed by the respondent-defendant (the plaintiff in the Elkhart County suit) that its **future** rights were interfered with, but that it had already been damaged. Yet, the Court of Appeals for the Seventh Circuit refers to the fact that the patent 942,735 is of later date and that during the period between the expiration of the two patents will give to defendant or its successor in title the right to make the improved carriers; that is to say, the Court **chooses** to say, notwithstanding the pleadings claiming damage for

past trespass, that between January 21, 1925, and December 7, 1926, nearly ten years in the future, was the thing involved in the Elkhart County suit, although the alleged libel notice complained of did not mention any patent and only mentioned a structure which was claimed to be an infringement.

The Elkhart County suit was not because of any slander to the title of the patent belonging to the defendant company. The alleged libelous published notice did not mention that the defendant had any patent, and the patent question was not referred to in that suit, except that it was mentioned as an incident of attempted sale of the business and sale of manufactured hay cars. The patent was ignored because it embodied the goods complained of and was an incident only. The damage was not because of any claim regarding the patent.

To sum up this paragraph II:

Defendant was making an alleged infringing structure.

Notice was served in October, 1909.

The notice was immediately made public by publications in the newspapers—the alleged libel.

No reply was made except that in January or February, 1910, Peterson, then president of the respondent-defendant company, told Boyer that the said defendant was "practically dead as far as the manufacturing was concerned."

Respondent-defendant did not decide to discontinue manufacture but attempted negotiations to continue.

Respondent-defendant had a selling agent Dietrich and carried out its contract with him for the season of 1910 by permitting him to use the plant and complete 200 hay carriers. These were delivered in March, 1910, for the haying season of

1910. The fact that these were being made in the plant of the defendant company was known to petitioner-plaintiff and was a violation of right after notice.

In September, 1910, the beginning of the next manufacturing season, suit was brought claiming that the publication of the notice was libelous and that it had prevented the sale of hay cars, although the sale had been repeatedly attempted by the respondent-defendant. A claim of $3,000 lost profits and $10,000 damages was made because of interference with the sale of hay cars and of a patent not mentioned in the alleged libelous notice.

Petitioner-plaintiff, regarding this as evidence of repeated attempts at trespass and a bold claim of right, brought suit, as to which the Court below has refused to take equitable jurisdiction.

Respondent answered claiming adverse right.

The bill of complaint was dismissed for want of equity.

The Court of Appeals affirmed the lower court on the ground that the facts did not present a case for equitable jurisdiction.

III. The Court below in its opinion seems to hold that the respondent-defendant has a right to institute such proceedings, like the suit in the Elkhart County court, and says that at best these facts would only

> "justify an apprehension that if, in some proper court proceeding, defendant's contentions should ultimately be upheld, it might then, and only then, not unlawfully, however, but legally, resume the hay carrier business,"

which shows that the Court recognized that the

respondent-defendant was making adverse claims (see "defendant's contentions"), and was seeking to have the same adjudicated in the Elkhart County Court. There was no need to go into that Circuit, all it needed to do was to assert its right and not say that it was "practically dead", and as soon as it made definite assertion of right or contention this suit was brought.

IV. The decision and ruling of the Circuit Court of Appeals is fundamentally erroneous in that it does not recognize the fact that subsequent to the notice of infringement, the respondent-defendant company continued its infringing acts in the actual manufacturing and sale of the alleged infringing hay cars, doing business right along with its selling agent; that it made repeated efforts to sell the hay cars to others; and that it brought suit claiming its rights to sell hay cars were interfered with by the published notice, which notice related only to hay cars and not to patents owned by the respondent-defendant, and holds that respondent-defendant company had the right to contend saying, "if, in some proper court proceeding, defendants' contention should ultimately be upheld it might then, * * * * resume the hay carrier business."

Therefore, the said decision contravenes the law as decided in similar cases in this court and specific decisions on substantially similar facts involving other patents in many other of the United States Circuit Courts of Appeals.

Wherefore, your petitioner respectfully prays: That a writ of certiorari may be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Seventh Circuit, commanding the said Court to certify and send to this Court, on a certain day to be therein

designated, a full and complete transcript of the record of all proceedings of the said Court of Appeals in the said case therein, entitled Goshen Manufacturing Company, Appellant, vs. The Hubert A. Myers Manufacturing Company and Hubert A. Myers, Appellees, in Equity No. 2027, to the end that the said case may be reviewed and determined by this Court as provided in Section 6 of the Act of Congress entitled, "An Act to establish Circuit Courts of Appeal and define and regulate in certain cases the jurisdiction of the Courts of the United States, and for other purposes, approved March 3, 1901," and that your petitioner may have such other and further relief or remedy in the premises as to this Court may seem appropriate and in conformity with the said act.

And your petitioner will ever pray.

.....

Solicitor and of Counsel for Petitioner, the Goshen Manufacturing Company.

.....

Of Counsel.

I hereby certify that I am solicitor and of Counsel for the Petitioner herein, the Goshen Manufacturing Company; that in accordance with the request of said petitioner the foregoing petition has been prepared; that the allegations contained in said petition are true, to the best of my knowledge and belief; and that said petition is, in my opinion, well founded in law as well as in fact.

.....

BRIEF IN SUPPORT OF PETITION.

The substance of the petition will not be repeated here, as the matter is stated quite fully, and the facts are summed up in condensed form at the end of paragraph II.

The rule of law, established by a long line of authorities, without any decision to the contrary, so far as petitioner has been able to ascertain, is that where the defendant has trespassed upon the complainant and after notice insisted upon the right to repeat the trespass, and is actually guilty of further trespass, the complainant is warranted in assuming a likelihood of the repetition thereof, and that a court of equity will take jurisdiction and enjoin the defendant. Indeed, under circumstances of this kind, after suit if the defendant filed answer insisting upon its right to do the acts complained of and to continue the alleged trespass, it is sufficient ground for taking of equitable jurisdiction, although intent to do the acts complained of is disavowed.

The following authorities are referred to, with brief quotations, as absolutely supporting in effect the substance of the above proposition:

General Electric vs. New England Electric, 128 Fed. Rep. 738 (63 C. C. A. 448),

in the Court of Appeals for the Second Circuit, Lacombe, Townsend and Coxe, Circuit Judges, by Coxe, C. J. See bottom of p. 739 of the report:

> "If the pleas be analyzed a little closer it will be observed that defendants, in effect, admit infringement prior to August, 1902. In August of that year they stopped making new receptacles, but admit that from August

until October 10th they were engaged in making up the stock on hand. They do not deny that they were selling receptacles during this period. After October 10th, the date of the verification of the bill and two months before it was filed, they ceased to sell but continued to deliver infringing receptacles; and for aught that appears have continued to deliver and are now delivering said receptacles. The pleas draw a sharp distinction between new sales of the infringing devices and their delivery pursuant to old sales, so that the allegation that defendants ceased, prior to the suit, to make, use or sell the patented device is not at all incompatible with the theory that they have a large stock of infringing devices on hand which they can at any time put on the market. In other words, the defendants seem to be of the opinion that it is not an infringement of the patent to distribute infringing receptacles to their customers provided the contract of sale was made prior to August, 1902."

The decree dismissing the bill was reversed.

Morton Trust Company vs. Standard Steel Car Co., 177 Fed. Rep. 931 (101 C. C. A. 211),

in the Court of Appeals for the Third Circuit, before Gray and Lanning, Circuit Judges, and McPherson, District Judge, by Lanning, C. J. At p. 932 the Court said:

"One of the contentions on the proofs in the court below was that the patent is invalid. That contention was in effect an

> assertion of its right to resume the use of the alleged infringing machine. **In such a case,** if the **patent be valid,** the complainant is **entitled to an injunction,** though he may not be entitled to an accounting for profits and damages."

In the case at bar the Court of Appeals for the Seventh Circuit said of the acts and doings of respondent-defendants:

> "at best they would justify an apprehension that if, in some proper court proceeding, **defendant's contentions** should ultimately be upheld, it might then, and only then, not unlawfully, however, but legally resume the hay carrier business."

And it was **alleged** in the **answer** in the suit at bar that the **patent is valid.**

Johnson, et al. vs. Foos Manfg. Co., 141 Fed. Rep. 73, (72 C. C. A. 105), in the Court of Appeals for the Sixth Circuit, before Lurton, Severens and Richards, Circuit Judges, Judge Lurton, C. J., saying at p. 74:

> "The cause came on to be heard in the court below * * * * but the trial judge, without passing upon the merits of the case, dismissed the bill because he thought that the single machine made, sold, and installed by the defendant company had been subsequently licensed by complainant, upon the user agreeing to pay a royalty, and that no further infringement was **threatened.** The remedy at law he therefore held to be adequate to recover damages for the single

> infringement averred to have occurred before the bill was filed and no case made requiring an injunction against further infringement."

And at p. 78 Judge Lurton said:

> "The answer was filed June following. The solicitors for the **appellees** have **insisted** that this **answer is a disclaimer of any intent** to **further infringe. After denying the validity of** the complainant's patents, that Johnson was the original inventor, that the invention was patentable, or, if valid, that complainants owned the patents, it most **vigorously denies all infringement."**

At page 79 Judge Lurton said:

> "The **assertion of a right** to make the devices complained of as an infringement, in the absence of a very express denial of a purpose to exercise the right claimed, **justifies the presumption that further infringement is to be apprehended** if that device shall prove to be an infringement."

In the case at bar, in the answer to the bill of complaint there is no allegation that the respondent-defendants will not make the structure complained of in the future, for at R. p. 13 defendant merely alleges **discontinuance** some **six** months **after notice,** and denies that it has avowed determination to continue to manufacture and sell any such hoisting device, and does not say it has definitely discontinued. At R. p. 14 it alleges invalidity of the patent.

Thus it is seen that the facts referred to by Judge Lurton were exactly similar in the particulars enumerated to the facts in the case at bar, and the decree dismissing the bill was reversed. See bottom of p. 88 of the report.

Deere & Webber Co. vs. Dowagiac Mfg. Co., 153 Fed. Rep. 177, (82 C. C. A. 351),

in the Circuit Court of Appeals for the Eighth Circuit, before Sanborn, Hook and Adams, Circuit Judges, by Adams, C. J. The answer in this case says, see p. 178:

> "but defendant avers that it ceased the sale of said grain drill long prior to the beginning of the present action;"

and it was alleged that said defendant

> "has no intention nor has had any intention of manufacturing, using or selling, or causing to be manufactured, used, or sold any grain drills embodying in any sense the features of said Hoyt patent."

Yet, Judge Adams said at p. 179:

> "The **answer** amounts to a vigorous **assertion** of the **invalidity** of complainant's **patent** and of defendant's right to make, use, and vend the device described in it;"

At p. 180 Judge Adams said:

> "The legal questions are therefore these: First. Where the validity of complainant's patent is denied, the right to in-

fringe asserted, the possession of a large quantity of infringing machines admitted, and no satisfactory evidence adduced of cessation to infringe for any considerable time before the beginning of the suit, is the danger so threatening as to warrant injunctive relief? Second. **Does the allegation in the answer** that defendant does not intend to infringe any more prevent the granting of injunctive relief to the complainants restraining the defendant from further infringement? We think in the light of the pleadings and proof just analyzed these questions are self answering, but as they are earnestly argued by counsel we proceed to their consideration."

And on p. 181 there winds up the statement:

"Considering the likelihood that an infringement once practiced will be repeated as long as the wrong doer believes he is right (as from the pleadings in this case the defendant appears to believe), we think **the patentee is entitled to a more effective remedy than a mere promise** of that kind. The authorities abundantly support this conclusion"

citing:

"Celluloid Mfg. Co. vs. Arlington Mfg. Co., (C. C.) 34 Fed. 324;

"White vs. Walbridge (C. C.) 46 Fed. 526;

"Sawyer Spindle Co. vs. Turner, (C. C.) 55 Fed. 979;

"Matthews & Willard Mfg. Co. vs. National Brass & Iron Works, (C. C.) 71 Fed. 518;

"New York Filter Mfg. Co. vs. Chemical Building Co., (C. C.) 93 Fed. 827."

The decree of the Court below awarding an injunction and an accounting was affirmed.

It will be noted that in this Deere & Webber vs. Dowagiac case, there was in the answer the absolute promise to discontinue the trespass, although it was asserted that there was no infringement and that the patent was invalid, a much stronger case for withholding equitable relief than the case at bar.

This case of Deere & Webber vs. Dowagiac was followed in

Evans vs. Victor, 204 Fed. Rep. 361 (122 C. C. A. 531),

in the Circuit Court of Appeals for the Eighth Circuit, before Sanborn, C. J. and Munger and Trieber, District Judges, Judge Sanborn speaking for the court saying, toward the bottom of p. 371:

> "and the search, the threat to repeat it at will, and the insistent claim of the right to do so, which the bill and the statement for the defendants present, disclose a compelling equity which gives ample jurisdiction to the court below to grant the injunction sought."

citing Deere & Webber Co. vs. Dowagiac, supra.

In a decision of this court in

Kate C. Archer vs. Greenville Sand & Gravel Co., 233 U. S. 60, B. 58, L. Ed. 850,

a writ of certiorari was granted because the court below had dismissed the bill for want of equitable jurisdiction. The Gravel Company filed a demurrer under nine specifications, alleging want of equity in the bill because of an adequate remedy at law, and want of substance in it because petitioner was not the owner of the sand and gravel in the bed of the river. The demurrer was sustained. The case was taken on writ of certiorari and reversed by this Court, thereby granting to the plaintiff the right to equitable jurisdiction in a case comparable with the case at bar, although the case does not relate to a patent suit.

Other authorities at circuit warranting the issuing of an injunction under circumstances identical with those in the case at bar are:

Woodworth, et al. vs. Stone, Fed. Case No. 18021, 30 Fed. Cas. p. 523.

Potter, et al. vs. Crowell, Fed. Case No. 11323, 19 Fed. Cas. p. 1143.

Jenkins vs. Greenwald, Fed. Cas. No. 7270, 13 Fed. Cas. p. 519.

Rumford Chemical Works vs. Vice, Fed. Case No. 12136, 20 Fed. Cas. p. 1355.

Bullock Printing Press Co. vs. Jones, et al., Fed. Cas. No. 2132, 4 Fed. Cas. p. 659.

American Bell Telephone Co. vs. Globe Telephone Co., 31 Fed. Rep. 729.

Celluloid Manfg. Co. vs. Arlington Manfg. Co., 34 Fed. Rep. 324.

Facer vs. Midvale Steel-Work Co., 38 Fed. Rep. 231.

Norton, et al. vs. California Automatic Can Co. et al., 45 Fed. Rep. 637.

White vs. Walbridge, 46 Fed. Rep. 526.
California Electrical Works vs. Henzel, 48 Fed. Rep. 375.
Winchester Repeating Arms Co. vs. American Buckle & Cartridge Co., 54 Fed. Rep. 703.
Sawyer Spindle Co., et al. vs. Turner, 55 Fed. Rep. 979.
New York Belting & Packing Co. vs. Gutta Percha & Rubber Mfg. Co., 56 Fed. Rep. 264.
Mathews & Willard Mfg. Co. vs. National Brass & Iron Works, 71 Fed. Rep. 518.
Bonsack Mach. Co. vs. Underwood, 73 Fed. Rep. 206.
Lever Bros. vs. Pasfield, 88 Fed. Rep. 484.
New York Filter Mfg. Co. vs. Chemical Bldg. Co., 93 Fed. Rep. 827.
National Meter Co. vs. Thomson Meter Co., 106 Fed. Rep. 531.
Chicago Pneumatic Tool Co. vs. Philadelphia Pneumatic Tool Co., 118 Fed. Rep. 852.
Cayuta Wheel & Foundry Co. vs. Kennedy Valve Mfg. Co., 127 Fed. Rep. 355.
Brookfield, et al. vs. Elmer Glassworks, 132 Fed. Rep. 312.
General Electric Co. vs. Bullock Electric Mfg. Co., 138 Fed. Rep. 412.
Seeger Refrigerator Co. vs. White Enamel Refrigerator Co., 178 Fed. Rep. 567.
American Bank Protection Co. vs. City National Bank of Johnson City, Tenn., 181 Fed. Rep. 375.
Luten vs. Dover Constr. Co., 189 Fed. Rep. 405.

See also
Robinson on Patents, Section 1088.
Walker on Patents, Section 701.
Hopkins on Patents, Section 524.

It is submitted that there is fundamental error in the position taken by the Court of Appeals for the Seventh Circuit in dismissing the bill for want of equitable jurisdiction because it substantially denies the right to patent property until the same has been adjudicated by a court, disregarding the grant of the patent which is prima facie good. This is evidenced by the statement of the Court that the respondent-defendant had a right to bring the suit in the Elkhart County court to have an adjudication of the patent, the Court saying:

> "at best they" (the facts in this case, referring to the Elkhart County suit and other matters) "would justify an apprehension that if, in some proper court proceeding, defendant's contentions should ultimately be upheld, it might then, and only then, not unlawfully, however, but legally resume the hay carrier business."

It is therefore clear that the Court of Appeals for the Seventh Circuit does not regard the grant of a patent as according to the patentee any rights, but that a defendant would have the right to make contentions about it and in some way in some proper court proceeding (whatever that might be aside from an infringement suit) have its contentions upheld so that it could, "not unlawfully, but legally" resume the trespass, such as the hay carrier business. Such position is wholly unwarranted. The patent is presumably good; the Court must so regard it prima facie; and the defendant's only right to attack it would be to insist upon its right adverse thereto in place of a claimed acquiescence when contending to the contrary, so that the question of infringement could be tried out in an infringement suit.

That the respondent-defendant had infringed, and insisted upon its right to infringe; had infringed after notice, and had sued charging that the publication of the notice was libel, thereby contending for its right, is certainly sufficient warrant for the Court to take equitable jurisdiction, because under such circumstances the unbroken line of authorities, until the decision in this case, is that there is presumed to be a liability of repetition of the trespass, which should be enjoined.

Injunction is the proper remedy in a patent case, and when there is a threat of infringement or claim of adverse right after trespass, it is the only adequate remedy. The sufferings of a patentee seeking an accounting are certainly not unknown to this Court, and he should be accorded the injunctive relief against a trespasser claiming right.

The grant of the writ of certiorari to avoid the teetotal confusion of law in patent cases of this kind is warranted for the same reason that it was warranted in the case of **Kate C. Archer vs. Greenville Sand & Gravel Co.**, above cited.

It seems hard to establish the law that a patent is property and that general rules apply thereto the same as to other property. The menace to patent property involved in permitting a trespasser to assert rights and avoid an injunction should certainly not be permitted.

Respectfully submitted.

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Solicitor and of Counsel for Petitioner.